

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce Hearing on “Holding Big Tech Accountable: Legislation to Build a Safer Internet.” December 9, 2021

Ms. Jessica Rich, Of Counsel, Kelley Drye & Warren LLP

The Honorable Michael C. Burgess (R-TX)

1. Ms. Jessica Rich, in your testimony you state that, currently, consumers need to read lengthy privacy and content moderation policies just to understand how companies use their data and police their user content. I have a discussion draft of a bill to require large Internet platform companies to biannually submit to the Federal Trade Commission their policies for users to appeal content moderation decisions by the platform. Do you think such a requirement to submit appeal information to the FTC would help improve transparency for users of Internet platforms?

Response: Requiring submission of content moderation policies to the FTC, so that the FTC can in turn post them publicly, would increase public visibility into these policies. However, consumers already are overloaded with complex information, making it unlikely that they will review such policies and understand all of the details, nuances, and decisions reflected in them. For this reason, public posting would probably be more useful for researchers and policymakers than for consumers.

2. Ms. Rich, one concern with the use of social media is the way algorithms filter and recommend content to users. It is relatively easy to manipulate your own algorithm by consecutively clicking on similar content. Within minutes, your entire feed will be filled with like-kind content. This becomes a problem when an individual repeatedly accesses content that may be harmful. For example, users can quickly be recommended content regarding eating disorders, hate speech, or ways to buy illicit products, like drugs. Are the algorithms used on social media platforms too reactive to user interactions?

Response: Certainly, the tendency for algorithms to magnify and duplicate harmful content is a serious concern. However, addressing the way algorithms respond to user interactions is beyond my technological expertise.

3. Ms. Rich, this Congress, I introduced the TROL Act (H.R. 192) to combat abusive patent demand letters from trial lawyers. We need to pass a comprehensive privacy bill that gives enforcement to the Federal Trade Commission and State Attorneys General to help prevent abusive trial lawyers who may work through private rights of

action. Can you address the consequences small businesses may face if any privacy law includes private rights of action?

Response: Whether to grant a privacy right of action (“PRA”) has proved to be one of the most controversial issues in the debate about whether to pass a federal privacy law. PRA proponents cite the need to ensure recourse for injured consumers, given the limited reach and scope of federal and state enforcement actions. Opponents cite abuses by class action lawyers seeking big payouts – a concern that is especially concerning when small businesses are involved. One approach is to ensure that any federal legislation is sufficiently robust and well-funded, so that consumers are appropriately protected without a PRA. Another is to impose parameters around a PRA to prevent abuse – for example, limits on any payments to lawyers, standards of proof that must be met, and/or providing companies with the right to cure a violation before a PRA can proceed.